

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1793 of 1990**

Ramkrishna Narayan Pillai alias Nair                      Petitioner.

Vs

Administrator, Maharashtra Housing  
& Area Development Authority & ors                      Respondents.

Mr S.S.Lanke, for the petitioner.  
Mr S.J.Rairkar, for respondent no.3.  
Mr V.S.Gokhale, AGP for respondent nos 1 and 2.

**CORAM : B.H.MARLAPALLE & D.B.BHOSALE, JJ.**  
**DATE : APRIL 28, 2006.**

**PC:**

1. This petition pertains to a dispute regarding tenement no.467, Barrack No.53 of the Flood Affected Colony at Pune. It appears that the petitioner was allotted the said tenement with effect from 8.1.1966 on rental basis by the MHADA, i.e. respondent nos.1 and 2. He continued to occupy the said tenement but failed to pay the arrears in almost every year from 1977 to 1980. In spite of notices he had failed to pay the arrears and the eviction orders were also issued against him. Subsequently, his offer to pay arrears was accepted and the eviction order dated 12.1.1979 was recalled. He was issued yet another notice of eviction on 18.1.1979 in respect of the arrears for the year Sept. 1978 to December 1978. A similar notice was issued on 23.1.1980 to pay the arrears upto December, 1979. He claims that on or about 3.3.1980 he had executed

an agreement with Shri Rakeshkumar Manu Singh Chavan who was impleaded originally as respondent no.3 in the writ petition for handing over the tenement as a caretaker and the petitioner states that he had submitted an application on or about 2.2.1980 seeking permission to hand over the subject tenement to Mr Chavan as a caretaker. The respondent no.2, by letter dated 2.3.1980, had sought some clarifications or more information. However, it appears that without the permission received from respondent nos 1 and 2 the petitioner handed over the subject premises to Mr Chavan and purportedly left India to take up a job with Saudi Arabia. He further claims that when he returned in February 1990 and for good he approached respondent no.3 and requested him to hand over the possession. On 5.3.1990, he addressed a letter to respondent no.2 so as to know whether Shri Chavan had got the subject tenement transferred in his name and by a letter dated 6.3.1990 respondent no.2 informed the petitioner that the said tenement no.467, Chawl no.53, was regularised in favour of respondent no.3, hence this petition seeking a direction against respondent nos 1 and 2 to regularise the tenement no.467, Chawl No.53 in the name of the petitioner by striking down the regularisation order made in favour of Mr Chavan.

2. During the pendency of the petition, the tenement was transferred by Mr Chavan with the approval of the

respondent nos 1 and 2 allegedly in the name of Namdeo Gaikwad who has been impleaded as respondent no.3 in place of Mr Chavan as per the order dated 6.11.2003 passed by this Court. It appears that the original petitioner also died during the pendency of this petition and his daughter Ms Nigru Nair has come on record as his legal representative.

3. Respondent nos 1 and 2 have filed the affidavit-in-reply and it is pointed out at the first instance that the original petitioner could not have handed over the subject premises to Mr Chavan unless prior permission was obtained by the petitioner from respondent nos 1 and 2 and, therefore, the petitioner acted in breach of section 30 of the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenement) Regulations, 1981. The said provision reads as under:

"30. Permission for caretaker arrangement -

(1) An allottee may, in relation to a tenement which is an Authority premises, with the prior permission in writing of the Chief Officer, enter into a caretaker arrangement for such period as may be specified by him from time to time, -

(a) if he is required to leave the city or town in which the tenement is located for higher studies or for employment or for any other reasonable cause,

or

(b) if he is required to stay compulsorily in the premises provided by the employer as a part of his service condition, or

(c) if the caretaker arrangement is sought on any other ground, which, in the opinion of the Chief Officer, is reasonable:

Provided that, if the period of caretaker arrangement exceeds five years whether continuously or otherwise, the approval of the Board shall be necessary".

It is clear in the instant case that while inducting Mr Chavan as a caretaker the petitioner has not obtained prior permission and what he has done was only submission of an application in the first week of Feb., 1980 and he signed the agreement on 3.3.1980 in the absence of such prior permission for handing over the tenement to the caretaker. The second breach is that after a period of five years it was necessary for the petitioner again to approach respondent nos 1 and 2 and seek approval for extension of the caretaker's period beyond five years. This has not been done when the petitioner himself claims that he returned to India only in February 1990.

4. The affidavit submitted by respondent nos 1 and 2 states that Mr Chavan submitted an application on 10.9.1985 to respondent no.2 to regularise the tenement in

his name and with the said application he submitted a copy of the agreement dated 3.3.1990 executed between the petitioner and Mr Chavan and also a copy of the declaration made by the petitioner on 13.5.1985 stating that he or his wife had no right over the said tenement. A copy of the said declaration and claimed to be a true copy issued by the MHADA has been placed before us. The learned counsel for the petitioner submitted that there is no proof beyond doubt that this declaration was submitted by the petitioner, more so when he had not returned to India till Feb.,1990. This is a disputed question of fact which cannot be gone into in writ proceedings.

5. It is also pointed out by respondent nos 1 and 2 that the tenement came to be regularised in the name of Mr Chavan on 1.3.1986 on the basis of the no objection dated 13.5.1985 issued by the petitioner. It is further stated that Mr Chavan sold the said tenement by an agreement dated 19.4.1989 to Mr Shamkant Gaikwad and by following the procedure laid down under the Regulations it has been regularised in favour of Mr Shamkant Namdeo Gaikwad with effect from 5.5.1995. The newly added respondent no.3 Namdeo Gaikwad, who is father of Shamkant Namdeo Gaikwad, has filed an affidavit in reply and has submitted that he has nothing to do with the dispute raised in this petition in as much as that the said tenement has not been regularised in his name. This is duly supported by the

affidavit filed by respondent nos 1 and 2 and Shamkant Namdeo Gaikwada is not a party before us even as of today.

6. The petitioner having inducted a caretaker in the subject tenement in breach of the Regulations, now cannot turn back and seek a direction from this Court in the writ jurisdiction under Article 226 of the Constitution against respondent nos 1 and 2 for evicting Mr Chavan or Shri Namdeo Gaikwada, more so when the tenement which now stands in the name of Mr Shamkant Namdeo Gaikwad has been regularised.

7. Hence, the petition fails and same is hereby dismissed. However, the order of dismissal of this petition will not come in the way of the petitioner to resort appropriate civil remedy as may be permissible in law.

(D.B.BHOSALE, J.)

(B.H.MARLAPALLE, J.)